IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1839 OF 2003

IN

SUMMARY SUIT NO.798 OF 2002

Updesh Rajindersingh Oberio ..Plaintiff.

V/s.

Electrex (I) Ltd. & Ors. ..Defendants.

Mr.P.B. Kapadia for plaintiff.

Mr.S Nagvadaria for defendant Nos.2 to 4.

CORAM : J.P.DEVADHAR, J.

DATED : 10TH DECEMBER,2004.

P.C. :-

. Heard learned counsel for the parties.

2. This chamber summons is taken out by the defendant Nos.2 to 4 seeking condonation of delay of 456 days in filing Vakalatnama in Summary Suit No.798 of 2002.

3. In this case, the plaintiff had filed the

Summary Suit No.798 of 2002 against the defendant for recovery of sum of Rs.67,800/- under the Bill of Exchange drawn by the defendant No.1 which was accepted by the defendant Nos.2 to 4. It is the case of the defendant Nos.2 to 4 that the writ of summons has not been served upon them at all.

4. According to the defendant Nos.2 to 4, their representative had been to Bombay from Bangalore on 11/12/2003 in connection with Summary Suit No.2157 of 2002 filed by the plaintiff against the defendants. At that time, it was noticed that the present suit bearing No.798 of 2002 filed by the plaintiff against the defendants was placed on board for ex-parte decree. Thereupon, the defendant Nos.2 to 4 made enquiry with the department and came to know about the filing of the above summary suit against them and the same has been placed on board for exparte decree on the ground that the defendants have failed to enter appearance within 10 days of the service of writ of summons, when in fact, the writ of summons was not served upon them at all. Therefore, the present chamber summons is taken out by the defendant Nos.2 to 4 seeking condonation of delay in entering their appearance in the matter.

5. Although it is contended by the plaintiff that the writ of summons has been duly served at the office as well as the the residential address of the defendant Nos.2 to 4 from the records, it is seen that no proper service of the writ of summons is effected on the defendant Nos.2 to 4. It is the case of the plaintiff that the writ of summons has been served at the office address of the defendant Nos.2 to 4 at "503 /504, Raheja Centre, 5 & 6th floor, Nariman Point, Mumbai-400 021 as shown in the cause title to the suit. According to the defendant Nos.2 to 4, they do no have have office at the the above address and, therefore, service effected at the above address cannot be said to be proper service. In fact in the bill of exchange accepted by the defendant Nos.2 to 4, the office address of defendant Nos.2 to 4 is shown at 1103, Dalamal Tower, Nariman Point, Mumbai-400 021. Therefore, the service of the writ of summons at 503/504 Raheja Centre cannot be said to be proper service upon the defendant Nos.2 to 4.

6. Similarly, the affidavit of service filed by the plaintiff stating that the writ of summons has been served upon the defendant Nos.2 to 4 at their premises situated at Palm Court, 9th Road, Almeida Park, Bandra (W), Bombay - 400 050 cannot be said to

be proper service because according to thedefendant Nos.2 to 4 they are not staying at the said premises. In fact, the letters sent by the plaintiff to the defendant Nos.2 to 4 at the above address were returned by the postal authorities with the remark "left".

7. In these circumstances, I am of the opinion that the defendant Nos.2 to 4 have shown sufficient cause for condoning the delay in entering appearance.

8. In this view of the matter, the chamber summons is allowed in terms of prayer clause (a). However, there will be no order as to costs.

9. Vakalatnama filed by defendant Nos.2 to 4 in this chamber summons be treated as Vakalatnama filed in the suit.

10. Liberty to the plaintiff to take out Summons for Judgment.

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